

DBE Definitions & Requirements

Disadvantaged Business Enterprise Regulations

ATTENTION CONSULTANTS - Notice

On June 21, 2001, in order to more narrowly tailor CDOT's DBE program to conform with the results of CDOT's 2001 Disparity Study update, the Colorado Transportation Commission adopted Resolution No. 966, which established a new definition of Underutilized DBE (UDBE) for construction contracts and for consultant contracts and set a 10.93% overall annual DBE goal for the remainder of FFY 2001 and for FFY 2002.

The Disparity Study Update found that **ALL DBES** were underutilized on CDOT construction contracts and on CDOT consultant contracts, i.e., it determined that **ALL DBES WILL BE CONSIDERED TO BE UDBES**. Since all CDOT DBEs are considered to be UDBEs, CDOT's DBE list will also be the UDBE list.

Please contact Business Programs with questions about this change. Telephone: 303-757-9162 or 800-925-3427 or e-mail Karen.Gonzales@dot.state.co.us.

DISADVANTAGED BUSINESS ENTERPRISE

DEFINITIONS AND REQUIREMENTS

1. Definitions and Procedures - For this project, the following terms are defined:
 - A. Disadvantaged Business Enterprise (DBE). A small business concern that is certified as being:
 1. At least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
 2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
 3. "Socially and Economically Disadvantaged individuals" means those individuals who are citizens or lawfully admitted permanent residents of the United States and who are:
 - (a) Minorities or individuals found by the Small Business Administration pursuant to Section 8(a) of the Small Business Act to be disadvantaged.
 - (b) Individuals found by CDOT's Office of Certification to be socially and economically disadvantaged.
 - B. DBE Joint Venture. An association of two or more businesses formed to carry out a single business enterprise for profit for which purposes they combine their property, capital, efforts, skills and knowledge. DBE joint ventures must be certified as a joint venture. The DBE percentage of the joint venture will be determined at the time of certification.
 - C. Underutilized DBE (UDBE). A firm which meets the definition of Underutilized Disadvantaged Business Enterprise (UDBE) based on the findings and recommendations of CDOT's Disparity Study and is eligible to meet the contract goal as defined in the paragraph titled "Contract Goal."
 - D. Contract Goal. The goal for UDBE participation that the Department determines should appropriately be met by the selected consultant, based on the type of work included in each project and the availability of UDBEs capable of performing such work. The Contract goal will be the percentage stated in the invitation for consultant services and in the project documents.
 - E. Certification as a DBE by the Department
 1. Any small business may apply to the Colorado Department of Transportation (CDOT) for status as a DBE. Application shall be made on forms provided by CDOT for certification of DBEs. However, only work contracted or subcontracted to DBEs that also qualify as UDBEs and independently performed by UDBEs shall be considered toward contract goals as established elsewhere in these specifications.

2. It shall be the DBE applicant's responsibility to submit applications so that CDOT has sufficient time to render decisions. CDOT will review applications in a timely manner but is not committed to render decisions about a firm's DBE status within any given period of time.

3. The Department will make available a list of DBE contractors, consultants, vendors and suppliers for the purpose of providing a reference source to assist any consultant in identifying DBEs and UDBEs. Consultants will be solely responsible for verifying the Certification of UDBEs they intend to use prior to submitting a Statement of Interest (SOI.) The DBE list is available at:

http://www.dot.state.co.us/app_ucp/

2. Selection of UDBEs by Consultant:

A. Consultants shall exercise their own judgments in selecting any subconsultant to perform any portion of the work.

3. Requirements

A. The use of UDBEs is an evaluation factor for consultant selection under Section 24-30-1403 (2) CRS. All Consultants shall submit with their proposals a list of the names of their UDBE subconsultants to meet the contract goal.

B. If the Consultant proposes to voluntarily use any non-UDBEs on the project, the Consultant shall also submit the names of those DBEs. However, the non-UDBEs will not be used to meet the UDBE goal for the project.

C. Evaluation points will be awarded for UDBE participation during the Statement of Interest (SOI) scoring. A maximum of 5 evaluation points will be awarded for UDBE participation during the SOI scoring. If the consultant doesn't submit sufficient UDBE participation to meet the project goal, they may be awarded from 0 to 4 points, based on the amount of UDBE participation they submit. The consultant must submit all UDBE participation commitments on either CDOT Form #1330 (for NPS Contracts) or CDOT Form #1331 (for PS Contracts) with their SOI in order to receive the corresponding evaluation points.

D. The selected consultant must use the UDBE firms named (if any) on CDOT Form #1330 or #1331 in the Statement of Interest for the items of work described. The replacement of a named UDBE firm will be allowed only as provided for in (6) of the DBE Definitions and Requirements. Failure to comply may constitute grounds for default and termination of the Contract.

E. Consultant's UDBE Obligation.

1. The Consultant submitting a Statement of Interest and a Work Plan on consultant projects advertised by the Department agrees to ensure that UDBEs, as defined in this special provision, have equal opportunity to participate in the performance of contracts or subcontracts. The prime Consultant shall not discriminate on the basis of race, color, national origin, or sex in the selection and bidding process or the performance of contracts.

2. To ensure that UDBEs are offered equal opportunity to participate in the performance of contracts, it is the responsibility of the prime Consultant to offer and to provide assistance to UDBEs related to the UDBE performance of the subcontract. However, the UDBE must independently perform a commercially useful function on the project, as described in F(4) below.

F. Counting UDBE Participation Toward Goals

1. Once a firm has been certified as a DBE that qualifies as a UDBE, the total dollar amount of the contract awarded to the firm shall be counted toward the contract goal as explained below, and as modified for the project in the project special provisions titled "Contract Goal."

2. The actual dollar total of a proposed subcontract, supply or service contract with any UDBE firm shall be reported to the Department in the Consultant's Cost Proposal.

3. The eligibility of a proposed UDBE subconsultant will be finally established based on the firm's status at the time the contract is signed. If a firm becomes certified as a DBE during performance under a fully executed contract with CDOT but prior to the UDBE performing any work, then 100% of the work performed by the firm under that contract may be claimed as eligible work. No work performed by a UDBE

firm can be counted toward UDBE participation prior to the firm receiving certification as a DBE.

4. The Consultant may count toward its contract goal only that percentage of expenditures to UDBEs which independently perform a commercially useful function in the work of a contract. A UDBE is considered to be performing a commercially useful function by actually performing, managing, and supervising the work involved. To determine whether a UDBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, work performed solely by the UDBE, industry practices, and other relevant factors.

5. A UDBE may enter into subcontracts consistent with normal industry practices. If a UDBE subcontracts over 51% of the work of the Contract the UDBE shall be presumed not to be performing a commercially useful function. The UDBE may present evidence to rebut this presumption to the Department.

6. The Consultant may count toward its contract goal the percentage of expenditures for materials and supplies obtained from UDBE suppliers (regular dealers) and manufacturers specifically for use on the project, provided that the UDBEs assume the actual and contractual responsibility for and actually provide the materials and supplies.

a. The Consultant may count 100 percent of its expenditures to an UDBE manufacturer if the purchased items are to be used on the project. A UDBE manufacturer is a certified firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Consultant.

b. The Consultant may count 60 percent of its expenditures to UDBE suppliers that are not manufacturers, provided that the UDBE supplier performs a commercially useful function in the supply process. A supplier is a certified firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a supplier the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A supplier in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or suppliers within the meaning of this section.

c. The Consultant may count toward its UDBE goal the following expenditures to UDBE firms that are not manufacturers or suppliers:

1. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, provided that the fee or commission is determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services.

2. The fees charged for delivery of materials and supplies required to a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a supplier of the materials and supplies, provided that the fee is determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services.

3. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services.

4. Determination of goal achievement

To determine the goals achieved under this Contract, the UDBE participation shall be divided by the original prime Contract amount and multiplied by 100 to determine the percentage of performance. The Consultant shall maintain records of payment that show amounts paid to all UDBEs and DBEs. The Consultant shall submit a CDOT Form #1313 with each billing/invoice to the Department listing all subconsultants (including UDBEs and other DBEs) that participated in this Contract and the dollar amount paid to each. The Consultant shall certify the amount paid, which may be audited by the Department. When the participation by UDBEs is less than the Consultant committed to the Department, the Consultant shall submit a statement to CDOT along with the CDOT Form #1313 that indicates the amount of participation and gives reasons why it was different from the Consultant's SOI commitment.

5. Replacement of UDBEs used to meet the contract goal

- A. Based upon a showing of good cause the Consultant may request that a UDBE named in the Consultant's Statement of Interest be replaced with another UDBE pursuant to the terms and conditions of this special provision. Replacements will be allowed only with prior written approval of the Department.
- A. If a replacement is to be requested prior to the time that the named UDBE has begun to effectively prosecute the work under a fully executed subcontract, the Consultant shall furnish to the Department the following:
 - 1. Written permission of the named UDBE. Written permission may be waived only if such permission cannot be obtained for reasons beyond the control of the Consultant.
 - 2. A full written disclosure of the circumstances making it impossible for the Consultant to comply with the condition of award.
 - 3. Documentation of the Consultant's assistance to the UDBE named in the Consultant's Statement of Interest.
 - 4. Copies of any pertinent correspondence and documented verbal communications between the Consultant and the named UDBE.
 - 5. Documentation of the Good Faith Efforts in finding a replacement UDBE and the results of the efforts. It is within the control of the Consultant to locate, prior to award, UDBEs that offer reasonable prices and that could reasonably be expected to perform the work. For this reason, increased cost shall not, by itself, be considered sufficient reason for not providing an in-kind replacement.
- C. In the event a UDBE begins to prosecute the work and is unable to satisfactorily complete performance of the work, the Consultant shall furnish to the Department the following:
 - 1. Documentation that the subject UDBE did not perform in a satisfactory manner.
 - 2. Documentation of the Consultant's assistance to the UDBE prior to finding the UDBE in default.
 - 3. A copy of the certified letter finding the UDBE to be in default or a letter from the UDBE stating that it cannot complete the work and it is turning the work back to the Consultant.
 - 4. Copy of the contract between the Consultant and the UDBE, plus any modifications thereto.
- 6. Sanctions
 - A. It is the obligation of the Consultant to provide UDBE firms with equal opportunity to participate in the performance of the work.
 - B. It is the responsibility of UDBE firms to perform their work in a responsible manner fully consistent with the intent of the DBE program, and in substantial compliance with the terms and conditions of these DBE definitions and requirements.
 - C. UDBE firms which fail to perform a commercially useful function as described in subsection 4(E) of these DBE definitions and requirements or operate in a manner which is not consistent with the intent of the DBE program may be subject to revocation of certification.
 - D. A finding by the Department that the Consultant has failed to comply with the terms and conditions of these DBE definitions and requirements may constitute sufficient grounds for default and termination of the Contract.

How Do I...
